

## § 31.3406(a)-2

## 26 CFR Ch. I (4-1-14 Edition)

from withholding under §§ 31.3406(g)-1 through 31.3406(g)-3.

(d) *Cross references.* For the definition of *payor*, see § 31.3406(a)-2. For the definition of *taxpayer identification number*, see § 31.3406(h)-1(b).

[T.D. 8637, 60 FR 66114, Dec. 21, 1995]

### § 31.3406(a)-2 Definition of payors obligated to backup withhold.

(a) *In general.* *Payor* means the person that is required to make an information return under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W with respect to any reportable payment (as described in section 3406(b)), or that is described in paragraph (b) of this section.

(b) *Persons treated as payors.* The following persons are treated as payors for purposes of section 3406—

(1) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors (treating for this purpose spouses filing a joint return as one grantor);

(2) A grantor trust with ten or more grantors established on or after January 1, 1984 but before January 1, 1996;

(3) A common trust fund; and

(4) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* A person on the following list is not treated as a payor for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates—

(1) A trust (other than a grantor trust as described in paragraph (b)(1) or (2) of this section) that files a Form 1041 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(2) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 2002.

[T.D. 9010, 67 FR 48759, July 26, 2002, as amended by T.D. 9496, 75 FR 49835, Aug. 16, 2010]

### § 31.3406(a)-3 Scope and extent of accounts subject to backup withholding.

A payor who is required to withhold under § 31.3406(a)-1 must withhold—

(a) On the accounts subject to withholding under § 31.3406(a)-1 (b)(1)(i) or (b)(2)(ii); and

(b) On the accounts subject to withholding under § 31.3406(a)-1(b)(1)(ii) or (b)(2)(i), as described under § 31.3406(d)-5 (relating to notification of incorrect TIN) or § 31.3406(c)-1 (relating to notified payee underreporting), respectively.

[T.D. 8637, 60 FR 66114, Dec. 21, 1995]

### § 31.3406(a)-4 Time when payments are considered to be paid and subject to backup withholding.

(a) *Timing*—(1) *In general.* If backup withholding is required under section 3406 on a reportable payment (as defined in section 3406(b)), the payor must withhold at the time it makes the payment to the payee or to the payee's account that is subject to withholding. Amounts are considered paid when they are credited to the account of, or made available to, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) if they are not actually credited to the payee's account or made available to the payee. See paragraph (c) of this section for the timing of withholding by a middleman.

(2) *Special rules for dividends.* For purposes of section 3406 and this section—

(i) *Record date earlier than payment date.* In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date.

(ii) *Dividends paid in corporate reorganizations.* In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends that have been paid with respect to the stock in the new corporation will be provided to the payee, the dividend is considered paid on the date the payee actually exchanges the stock and receives the dividend.

(b) *Amounts reportable under section 6045*—(1) *In general.* Notwithstanding